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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2889 of 1995

The Manager,
Telecom Factory, Bombay-88. ...Petitioner

V/s.

Smt.Anjana Eknath Gunjal ...Respondent

Mr.V.A.Gangal for the Petitioner

CORAM : B.H.MARLAPALLE,J.
DATED : 19th December, 2007

P.C.

This Petition arises from the Judgement and order dated 26-10-1993 allowing Application(WCA)No. 260/B-41/1990 and the subsequent order dated 31-1-95 by which the application filed for setting aside the Judgement and order dated 26-10-93 in Application (WCA) No.260/B-41/1990 came to be rejected. The application for claiming compensation under the Workmens Compensation Act, 1923 (for short The Act) was filed by Smt. Anjana Eknath Gunjal - the present Respondent stating that her husband had sustained very serious stabbing injuries on his stomach and head and both the hands in an assault outside the Petitioner's factory

gate on 22-7-88 and he succumbed to injuries in Rajawadi hospital at Ghatkopar on the next day. It was further claimed that the deceased Eknath was on overtime duty and when he had gone out of his factory premises alongwith one of his colleagues Shri Kalidas Chondakar at about 5.00 p.m., the associate of Shri Sawant (one of the sons of retired security Officer Shri Sawant) attacked the deceased with a knife and stabbed on his stomach, chest and both hands.

2. On receiving the notice the Petitioner factory had appeared before the Commissioner for Workmens Compensation and was represented through an Advocate. Written statement was filed at Exh.C-2 and the application was opposed. The Petitioner's Advocate was present before the Commissioner on 16-4-92, 24-6-92 and 28-7-92 and on all other dates, the Petitioner's Advocate was present. However, on 26-10-93 the application came to be decided and allowed when the Petitioner's Advocate was not present before the Commissioner. On or about 14-2-94 an application was filed (marked as Exh.C-1) for setting aside the exparte order dated 26-10-93 and to restore the compensation claim application. This application at exh.C-1 was rejected on 31-1-95 as noted hereinabove.

3. The Act being a special statute, it would be necessary to examine at the threshold whether there is any remedy of applying for restoration of the claim petition by setting aside the exparte compensation award or the Rules framed under the said Act provide for such a remedy. With the assistance of Shri Gangal, I have gone through the provisions of Section 22 to 25 of the Act as well as Rules 20 to 33 of the Rules Section 22 prescribes the form of application, Section 22A deals with the power of Commissioner to require further deposit in case of fatal accident. Section 23 deals with the powers and procedures of the Commissioners. Section 24 provides for appearance of parties and Section 25 provides for method of recording evidence. Rule 24 of the Rules provides for a summary dismissal of the application if for reasons to be recorded the Commissioner finds that there are no sufficient grounds for proceeding further and as per sub-rule 2 therein the dismissal of such application shall not by itself preclude the applicant from presenting a fresh application for the settlement of the same matter. Rule-25 provides for preliminary enquiry into the application. Rule-26 is for notice to opposite party, Rule 27 deals with the appearance and examination of the opposite party. As per sub-rule 2 of

Rule 27 if the opposite party contests the claim as was done in the instant case, the Commissioner may, and, if no written statement has been filed, shall proceed to examine him upon the claim and shall reduce the result of examination to writing. Rule-28 deals with framing of issues and Rule 29 provides for power to postpone trial of issues of fact where issue of law arise and Rule 32 is regarding the Judgement to be recorded by the Commissioner. Sub-Rule 2 of Rule 32 states that the Commissioner at the time of signing and dating the Judgement shall pronounce his decision and thereafter no addition or alteration shall be made to the Judgement other than the correction of a clerical or arithmetical mistakes arising from any accidental slip or omission. Section 23 of the Act states that the Commissioner shall have all the powers of a Civil Court under the Civil Procedure Code for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling the production of documents and material objects. It is, therefore, clear that the scheme of the Act as well as the Rules framed thereunder does not provide for a remedy to apply for setting aside the exparte Award and to restore the claim Petition.

4. Mr.Gangal, the Learned Counsel pointed out that the challenge in this Petition is to the original Award

passed exparte as well as to the order rejecting the application for restoration of the claim Petition. He further pointed out that the entire claim amount has been deposited with the Registry of this Court when the Petition was admitted on 29-11-1995 by this Court.

5. When the Act does not provide for a remedy of applying for setting aside the exparte Award and restore the claim petition, the challenge to the order dated 31-1-95 thereby rejecting the application of restoration cannot be entertained in this Petition and at the sametime when the statutory remedy of Appeal under Section 30 of the Act is available against the Award, a Writ Petition does not lie before the High Court. In the instant case on rejection of the application for restoration, the Award passed exparte received finality as far as the Commissioner is concerned and, therefore, the same Award can be challenged by the Petitioner by filing an Appeal under Section 30 of the Act. Having regards to the facts that the entire Award amount has been deposited by the Petitioner and the Petition has been pending before this Court for the last about 12 years, it would not be in the interest of justice that the Petition is disposed with liberty to file an Appeal. Instead ends of justice would be better met if the petition is allowed to be converted into an Appeal under

Section 30 of the Act.

6. Hence, the Petitioner is granted leave to convert this Petition into an Appeal under Section 30 of the Act and this shall be done by 14th January, 2008. On conversion the Appeal be listed for final hearing before the appropriate Court.

[B.H.MARLAPALLE,J.]